



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

March 7, 1993

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

MEMORANDUM

SUBJECT: Regulatory Interpretation;  
Definition of "Annual" As It Applies to Tightness Tests

FROM: David W. Ziegele, Director, /s/  
Office of Underground storage Tanks

TO: UST/LUST Regional Program Managers

This is to respond to a request from Region IV for clarification of the definition of "annual" as it pertains to tank and line tightness testing.

280.41(a)(2) states "UST systems that do not meet the performance standards in § 280.20 or § 280.21 may use monthly inventory controls ... and annual tank tightness testing until December 22, 1998 ..." Similarly, 280.41(b)(1)(ii) requires that pressurized piping "have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted..."

"Annual" as used in these two cites means on or before the same date of the following year. Other interpretations cannot be supported by the letter or intent of the regulations. Note that, per 280.40(c), "... all UST systems must comply with the release detection requirements of this subpart by December 22 of the year listed ..." Therefore, for compliance, a tightness test must first be conducted within the annual time period before the compliance date, and again on or before the test date the year following the test.

For example, if a tank was due for leak detection by December 22, 1990 and was tested back on January 1, 1990, it was in compliance on its deadline, but had to be retested by January 1, 1991, only a few days thereafter.

Similarly, the phrase "every 5 years" means on or before the same date five years later, as the phrase is used in 280.41(a)(1). This cite reads "UST systems that meet the performance standards in § 280.20 or § 280.21, and the monthly inventory requirements ... may use tank tightness testing ... at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded ... whichever is later."

As you know, States may have imposed more stringent requirements than EPA's, and before

State Program Approval both sets of requirements would be in effect. If you have any questions on leak detection, please contact David Wiley of my staff at (703)308-8877.

cc: UST/LUST Regional Branch Chiefs  
OUST Management Team  
Shonee Clark, OUST (compendium)  
Dawn Messier, OGC  
Mimi Newton, OE  
Barbara Simcoe, ASTSWMO  
David Wiley, OUST

## **Regulatory Interpretation: Definition of “Annual” With Regards to Tightness Testing**

### **Background**

280.41(a)(2) states “UST systems that do not meet the performance standards in § 280.20 or § 280.21 may use monthly inventory controls ... and annual tank tightness testing until December 22, 1998 when the tank must be upgraded under § 280.21 or permanently closed under § 280.71...” Similarly, 280.41(b)(1)(ii) requires that pressurized piping “have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted ...”

Similarly, 280.41(a)(1) reads, “UST systems that meet the performance standards in § 280.20 or § 280.21, and the monthly inventory requirements ... may use tank tightness testing ... at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded ..., whichever is later.”

Note that, per 280.40(c), “... all UST systems must comply with the release detection requirements of this subpart by December 22 of the year listed ...”

Mississippi requested clarification from Region IV with regards to an enforcement action: Region IV requested clarification from HQ OUST.

### **Discussion**

Given that leak detection, including tightness testing, must be provided by the applicable compliance date, there are three possible interpretations of the annual requirement:

- 1) On or before the same date of the following year;
- 2) same as 1), except tanks in compliance with the first compliance date have one full year from that compliance date to retest; or
- 3) anytime during the following year, measured either by the calendar, by the December 22 schedule for phase-in, or by the last test date.

The first interpretation above is consistent with the regulations and their intent. For example, if a tank was due to provide leak detection by December 22, 1990 and was tested on January 1, 1990, it had to be retested by January 1, 1991, only a few days after its deadline. Under 2) or 3) above, this same tank could go until December 22 or December 31 of 1991 almost two years since the last test.

The same logic also applies to the phrase “every 5 years,” as applied to tightness testing on new and upgraded tanks. “Every 5 years” means on or before the same date five years later.